

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

UNITED STATES OF AMERICA,)	Case No. 1:10-cr-00432
)	
Plaintiff,)	Judge Dan Aaron Polster
)	
vs.)	<u>OPINION AND ORDER</u>
)	
ARTHUR DARBY,)	
)	
Defendant.)	

Before the Court is Defendant Arthur Darby's Motion for Compassionate Release pursuant to 18 U.S.C. § 3582(c), **ECF Doc. #: 931**, and Motion for Appointment of Counsel, **ECF Doc. #: 933**. On November 20, 2012, Darby was sentenced to 170 months in the custody of the Bureau of Prisons ("BOP"), to run consecutive with his state court case, after he pled guilty to one count of Conspiracy to Possess with Intent to Distribute and to Distribute Cocaine in violation of 21 U.S.C. § 846. Doc #: 594. He is currently being held at FCI Gilmer with an expected release date of September 8, 2030. Darby contends that he contracted COVID-19 in December of 2020. Doc #: 931. Notably, the Court is not able to ascertain from Darby's Motion(s) whether he has any medical conditions that places him at a high risk of grave illness were he to contract COVID-19 again. *Id.* Nonetheless, Darby asks the Court to release him to home confinement or otherwise to reduce his sentence. *Id.*

The statute authorizing compassionate release, 18 U.S.C. § 3582(c)(1), contains an exhaustion requirement. The exhaustion requirement mandates that a criminal defendant first ask the BOP to bring a motion for compassionate release on his behalf. 18 U.S.C. § 3582(c)(1).

Thereafter, a defendant may file a motion for compassionate release in the district court only after he has either fully exhausted his rights to appeal the BOP's failure to bring the motion on his behalf or when thirty days have passed from the warden's receipt of the request. 18 U.S.C. § 3582(c)(1)(A). This requirement is a "mandatory claim-processing rule" that does not permit a court to create any exception. *United States v. Alam*, 960 F.3d 831, 833–34 (6th Cir. 2020).

Darby's Motion does not indicate that he has satisfied the mandatory exhaustion requirements of § 3582(c)(1)(A), and the Court cannot waive them. Darby may file a motion for compassionate release in the district court once he has presented his request to the warden of his facility and at least 30 days have passed since the warden's receipt.

Accordingly, the Court *sua sponte* **DENIES WITHOUT PREJUDICE** the pending Motion for Compassionate Release and Appointment of Counsel. **ECF Doc. ##: 931, 933.**

IT IS SO ORDERED.

/s/*Dan A. Polster* *March 8, 2021*
Dan Aaron Polster
United States District Judge